As to point (7) above, their Lordships reject the suggestion made in argument that the Attorney should have advertised. He made enquiries at the last known address of the only son of Elizabeth Muttama with whom the Administrator had been in contact and drew a blank. It did not occur to the judge that the statements of ignorance of the full details of the family trees of the devisees undermined support for the 1974 order, and he sought no details of attempts to locate beneficiaries. It does not appear to their Lordships that the initial satisfaction of the judge, and the later satisfaction of the Federal Court, on this point should be considered erroneous in point of practice.

As to points (8) and (10) above, their Lordships join with the Federal Court in wholly rejecting the suggestions that the Attorney's application in November 1974 "was not made in good faith" or involved negligence in carrying out his duties.

The one point on which their Lordships were inclined to have misgivings was that the Attorney, who had notice of the lodging of a caveat by Gan, perhaps on November 9, 1974 (the date of his affidavit) and before the originating summons on November 11, and certainly before the order of November 25, did not mention it to the court. The notice did not state the grounds upon which the caveat was based. No mention was made of the Nahappan-Gan letter already quoted. Gan had not purported to communicate to the Attorney a claim to be entitled under that letter to buy at $150,000 or any other sum. Indeed Gan made no claim until December 10, 1974 (after the order was perfected) when he wrote enclosing a cheque for some $15,000 to the firm of the previous attorney Nahappan, the letter mentioning the $150,000 valuation. Faced with the fact that Gan had offered to him very recently a sum of only some $56,000, and wholly ignorant of the Nahappan-Gan letter, the Attorney in their Lordships' opinion may well be excused for assuming that in the context of a firm contract for $110,000 with Ng the caveat need not be brought to the attention of the court. Moreover it is very far from certain that if it had been, the order of November 25 would not have been made. There is much to be said for throwing doubt on the contractual efficacy of the Nahappan letter, but their Lordships do not wish to prejudge the outcome of Civil Suit No. 45. One thing however can be said: the valuation of $150,000 odd was not such as was envisaged by that letter since it was not by a "qualified valuer".

Their Lordships accordingly advise His Majesty the Yang di-Pertuan Agong that this appeal must be dismissed with costs.

Appeal dismissed.

Solicitors: *Philip Conway Thomas & Co.; Smiles & Co.*

SINGAPORE REPORTS

KAOLIM PTE. LTD. v. UNITED OVERSEAS LAND LTD.

[C.A. (Kulasekaram, Sinnathuray & D'Cotta JJ.) September 15, 1981]

[Singapore — Civil Appeal No. 52 of 1980]

Revenue Law — Property tax — Mortgaged property — Payment by purchaser of mortgaged property — Doctrine of subrogation — Whether applicable.

The appellants were the owners and the respondents were the purchasers of the property known as Kaolim Building. The owners bought the property in June 1976. To complete the purchase, they mortgaged the property twice. On March 10, 1980 the mortgagee bank offered the property for sale by tender. On March 20, the purchaser's tender was accepted by the bank. The property was subsequently conveyed to the purchasers. On April 2, 1980, the banks received a letter from the Property Tax Division requesting payment of $521,242.53 in settlement of the 3 years' arrears in property tax. Copies of the said letter were sent to the solicitors for the owners, purchasers and the bank.

The bank claimed that as the property was sold subject to the condition that the purchaser "shall be deemed to have purchased with full knowledge and notice of all . . . charges," the claim for property tax should be made to the purchasers. The purchasers joined issue with the bank on the interpretation of the said condition in the Conditions of Sale in the tender document. They took out a vendor and purchaser summons in which the bank were the first defendants and the owners, the second defendants. The learned Chief Justice granted a declaration in favour of the purchasers that upon payment of the arrears of the property tax to the Comptroller at the date of completion in respect of the property, the purchasers were subrogated to the rights of the Comptroller or the owners to the extent of the amount paid in any surplus arising from the proceeds of sale held in trust for the owners.

The owners appealed. They relied on Clause 16(c) of the Conditions of Sale.

Held, dismissing the appeal: (1) the appellants were not a party to the contract of sale between the bank and the respondents. The appellants were a stranger to the contract and therefore could not rely on the said Clause 16(c) nor any other provisions in the said contract;

(2) clause 16(c) is one of the general standard clauses found in a tender document. It has no application to sale of property by a mortgagee;

(3) there is no reason why in principle subrogation should be limited to the so far recognised categories of cases i.e. suretyship, bills of exchange, insurance and administration of trusts and estates;

(4) the learned Chief Justice directed the purchasers to pay the arrears of property tax so that the property was freed of charge. He must have concluded that reason and justice demanded that the purchasers be subrogated either to the rights of the Comptroller or the owners who would be entitled to the surplus of the proceeds of sale of the property held in trust for them by the bank. In practical terms, the purchasers having paid the Comptroller, they would deduct that amount in making payment of the purchase price to the bank. There was therefore no reason to interfere with the Order of the Chief Justice.

Cases referred to:-

(1) *Scruttons Ltd.* v. *Midland Silicones Ltd.* [1962] A.C. 446.

(2) *Orakpo* v. *Manson Investments* [1977] 3 W.L.R. 229, 242.

CIVIL APPEAL.

Robert Hsieh for the appellants.

Chan Sek Keong for the respondents.

Cur. Adv. Vult.

Sinnathuray J. (delivering the judgment of the Court): This appeal relates to the sale of land and building known as Kaolim Building at No. 20 Kramat Lane (the property). The appellants were the owners and the respondents are the purchasers of the property.

The owners bought the property in June 1976 for $4,850,000. To complete the purchase, they mortgaged the property to Far Eastern Bank Limited (the Bank) for an overdraft facility of $3,000,000. In November 1976 a second mortgage was made to the Bank to increase the facility up to $3,500,000.

On March 10, 1980, the Bank, in exercise of its statutory power of sale, offered the property for sale by tender. On March 20, the purchasers' tender was accepted by the Bank. The property has since been conveyed to the purchasers.

On April 2, 1980, the Bank received a letter from the Property Tax Division of the Inland Revenue dated March 31, wherein the Comptroller of Property Tax (the Comptroller) said that as the property had been sold, and property tax is a first charge, "kindly let me have immediately your cheque for $521,242.53 in settlement of the arrears of property tax ..." due for about three years. Copies of this letter were also sent to the solicitors for the owners, purchasers and the Bank.

On the same day, April 2, the solicitors for the Bank wrote to the Comptroller with copies to the other solicitors that as the property was sold subject to the condition that the purchaser "shall be deemed to have purchased with full knowledge and notice of all ... charges ...", the claim for property tax should be made to the purchasers.

The purchasers joined issue with the Bank on the interpretation of the abovementioned condition in the Conditions of Sale in the tender document. They took out a vendor and purchaser summons in which the Bank were the first defendants and the owners the second defendants.

The learned Chief Justice who heard the summons granted a declaration in favour of the purchasers that upon payment of the arrears of property tax to the Comptroller at the date of completion in respect of the property, the purchasers are subrogated to the rights of the Comptroller or the owners to the extent of the amount paid in any surplus arising from the proceeds of sale held in trust for the owners.

On appeal against the said order, at the hearing before us, it was submitted for the owners that the true and proper construction of the condition is that it was the purchasers who have to pay and discharge the arrears of property tax before the completion of the sale. Another submission was that the learned Chief Justice was wrong in holding that the doctrine of subrogation applied to the facts in this case.

At the conclusion of the hearing, we dismissed the appeal with costs. We now give our reasons.

On the first submission the condition we have referred to as in clause 16(c) of the Conditions of Sale in the tender document which, it is accepted, forms the contract between the Bank and the purchasers. Clause 16(c) provides as follows:

"The property is sold subject to:—

(a) ...

(b) ...

(c) all notices, charges, Orders of Court, charging orders, caveats and court or other claims affecting the property made or served whether before on or after the date of Sale. The Purchaser shall be deemed to have purchased with full knowledge and notice of all such schemes or proposed schemes, layouts, notices, demands, charges, Orders of Court, charging orders caveats and court or other claims which shall be complied with and discharged by and at the expense of the Purchaser who shall not be entitled to make or raise any objection or requisition whatsoever in respect thereof."

It is clear from the order of the learned Chief Justice that he did not construe clause 16(c). We venture to think the reason is that the appellants were not a party to the contract of sale between the Bank and the respondents. The appellants were strangers to the contract. The appellants therefore cannot rely on clause 16(c), or for that matter on any of the other provisions in the said contract (see *Scruttons Ltd.* v. *Midland Silicones Ltd.*[1]).

As regards clause 16(c), we are of the view that it is one of the general standard clauses found in a tender document when an owner offers his property for sale. The clause has no application to sale of property by a mortgagee.

Next, as regards subrogation, as was the view of Lord Edmund-Davies in *Orakpo* v. *Manson Investments,*[2] we too are of the view that there is no reason why in principle subrogation should be limited to the so far recognised categories of cases i.e. suretyship, bills of exchange, insurance, and administration of trusts and estates. In the same case Lord Diplock at page 234 said that subrogation "is a convenient way of describing a transfer of rights from one person to another, without assignment or assent of the person from whom the rights are transferred and which takes place by operation of law in a whole variety of widely different circumstances." And Lord Salmon at page 240 said: "The test as to whether the courts will apply the doctrine of subrogation to the facts of any particular case is entirely empirical. It is, I think, impossible to formulate any narrower principle than that the doctrine will be applied only when the courts are satisfied that reason and justice demand that it should be."

In this case, property tax of $521,242.53 was due and owing on the property by the owners. Had the Bank under the mortgage paid the tax it could deduct the amount from the proceeds of sale. When the Comptroller came to know that the property had been sold by the Bank, he properly looked to the Bank for payment. He could also look for payment from either the owners or purchasers of the property: see The Property Tax Act (Cap. 144). The learned Chief Justice therefore directed the purchasers to pay the arrears of property tax so that the property was freed of the charge. He must have concluded that reason and justice demanded that the purchasers be subrogated either to the rights of the Comptroller or the owners who would be entitled to the surplus of the proceeds of sale of the property held in trust for them by the Bank. In practical terms, the purchasers having paid the Comptroller, they would deduct that amount in making payment of the purchase price to the Bank. We see no reason to interfere with the order of the learned Chief Justice.

Appeal dismissed.

Solicitors: *Boswell, Hsieh & Lim; Shook Lin & Bok.*